



## Legislation Text

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**File #:** 30450, **Version:** 1

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### **Fiscal Note**

The City's total costs for acquiring the property are an estimated \$2,982,700 (including purchase price of \$2,759,400 (\$14 per sq ft x 197,100 sq ft), \$55,500 for prorated taxes and miscellaneous closing costs, and \$168,000 for the City's match of federal and State grants totaling \$800,000 for demolition of improvements and environmental remediation). The City received \$46,000 in revenues for the lease of a building on the site. The City is selling the property for \$3,153,600 (\$16 per sq ft x 197,100 sq ft). The Property is within Tax Incremental Financing District No. 36 Capitol Gateway and the costs to acquire the Property were charged to the TID. Sale proceeds will be credited to the TID.

### **Title**

Accepting a Selection Committee's recommendation of the Gebhardt Development, LLC proposal for the purchase and redevelopment of City-owned properties located at 802 and 854 East Washington Avenue and authorizing the execution of a Purchase and Sale Agreement with Gebhardt Development, LLC for the purchase and redevelopment of these properties.

### **Body**

The City of Madison established a Land Banking Fund to purchase and stabilize developable parcels of land in the City of Madison. The City's Economic Development Committee approved guidelines for the purchase and sale of land acquired with Land Banking Funds (attached). The City used the Land Banking Fund to purchase properties in the 700 and 800 Blocks of East Washington Avenue (the "Sites"), as shown on the attached. The City issued a Request for Proposals (the "RFP") seeking developer interest in the purchase and redevelopment of the 800 Block North Site (consisting of City-owned properties located at 802 and 804 East Washington Avenue) (collectively, the "Property"), as shown on the attached. The City received three proposals (the "Proposals") that met the submission requirements of the RFP. An ad-hoc "Selection Committee" of Alders, City staff, and development professionals approved by the Mayor reviewed the Proposals, and has recommended that the proposal submitted by Gebhardt Development, LLC be accepted by the Common Council. The Selection Committee recommended that the C.D. Smith proposal be a contingency proposal if negotiations with Gebhardt Development, LLC are unsuccessful.

Subsequent to the issuance of the RFP, the City received grants from the U.S. Environmental Protection Agency (the "EPA") and the Wisconsin Department of Natural Resources (the "DNR") for environmental remediation on the Property. The grants require that the City continue to own the Property until such remediation is completed and the EPA and DNR have issued Notifications of Closure on the Property. To comply with the ownership requirements of the grants and to facilitate the timely development of the Property, the City will enter into a lease with Gebhardt Development, LLC on the Property that will retain the Property in City ownership until the Notifications of Closure are issued by the agencies. Upon receipt of the Notifications the lease will terminate and title to the Property will be conveyed to Gebhardt Development, LLC at the purchase price.

City staff have negotiated the terms and conditions of a Purchase and Sale Agreement with Gebhardt Development, LLC for the purchase and redevelopment of the Property, as set forth in a Letter of Intent dated June 4, 2013.

NOW THEREFORE BE IT RESOLVED that Common Council accepts the Selection Committee's recommendation of the Gebhardt Development, LLC Proposal, as may be amended through the development review process, for the 800 Block North Site and its recommendation that the C.D. Smith proposal be a contingency proposal if negotiations with Gebhardt Development, LLC are unsuccessful; and,

BE IT FURTHER RESOLVED that the Common Council authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City of Madison (the "Seller") and Gebhardt Development, LLC or another entity owned or controlled by Gebhardt Development, LLC or its principals (the "Buyer"), for the purchase and redevelopment of properties owned by the Seller located at 802 and 854 East Washington Avenue in the City of Madison, Wisconsin (collectively the "Property"), as legally described in Exhibit A below and shown on the attached Exhibit B, for a mixed-use redevelopment project subject to the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Warranty Deed (the "Deed"), fee simple ownership of the Property, including all improvements located thereon and all appurtenances thereto free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinances and the "Permitted Exceptions" (as defined below).
2. Project. The Buyer shall develop a mixed-use project (the "Project") on the Property in two construction phases (collectively, the "Phases") as shown on the attached Exhibit C and described as the Phase 1 Property and the Phase 2 Property. Development on the Phase 1 Property shall consist of an approximately 50,000 square foot grocery store, approximately 175 to 240 residential rental units and an approximately 350 parking stall structured parking facility (the "Phase 1 Project"), and development on the Phase 2 Property shall consist of 22 owner-occupied housing units, an additional approximately 173 parking stalls in the structured parking facility and approximately 65,000 square feet of retail/commercial/office space (the "Phase 2 Project") or other uses allowed on the Phases by the zoning text.
3. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.
4. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be Three Million One Hundred Fifty-Three Thousand Six Hundred Dollars (\$3,153,600) (\$16.00 per square foot multiplied by the number of square feet (197,100) of the Property, as verified by the ALTA Survey to be provided by the Seller in accordance with Paragraph 13). The Purchase Price shall be payable at Closing, subject to the adjustments and prorations herein provided.
5. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall deposit into escrow with the Title Company (as defined in Paragraph 19) Thirty Thousand Dollars (\$30,000) as "Earnest Money," which will be non-refundable except as otherwise provided in Paragraphs 11, 12 and 17 of this LOI and the corresponding provisions of the Agreement, to be applied toward the Purchase Price, along with any accrued interest, at Closing in accordance with Paragraph 4. In the event that the Ground Lease is executed between the parties as provided in Paragraph 6 the Earnest Money shall remain in escrow with the Title Company until Closing.
6. Ground Lease. In the event the Seller is required to retain fee title to the Property pending its receipt of notification of closure of two (2) grants from the United States Environmental Protection Agency and a grant and a Certificate of Completion from the Wisconsin Department of Natural Resources (collectively, the "Notification Notices") related to the Seller's environmental remediation of the Property, the parties agree to negotiate in good faith a ground lease (the "Ground Lease") for the Property acceptable to the Seller, the Buyer and the Buyer's lender conveying leasehold title to the Property to Buyer for One Dollar (\$1). Upon execution of the Ground Lease, the Seller shall execute and deliver the Deed to the Title Company to be placed in escrow and be available for immediate release for recordation with the Register of Deeds Office of Dane County at Closing. The Ground Lease shall terminate upon recordation of the Deed.

7. Limited Representations and Warranties; AS-IS Condition. The Agreement shall provide warranties of title, authority, and a warranty that the Notification Notices have been issued for the Property, and a warranty that Seller has no notice or knowledge of new environmental contamination occurring during Seller's period of ownership. In all other respects, the Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults", and shall agree that it relied upon no warranties, representations or statements by the Seller, or any other persons for the Seller, in entering into the Agreement or in Closing the transaction described herein. The Buyer's Closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the Buyer's contingencies, as generally described in Paragraph 11. In Closing and completing the transaction, the Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of the Seller or its agents or employees, other than those set forth in this Paragraph 7.
8. Demolition. Provided the Buyer has elected to proceed with the purchase of the Property following review of the Buyer's contingencies pursuant to Paragraph 11, the Buyer shall be responsible for the demolition of any improvements (including removal of asphalt and concrete surfaces) on the Property. The Seller will cooperate with the Buyer in seeking federal, State, County and other funds available to apply to the cost of demolition.
9. Environmental Remediation. Provided the Buyer has elected to proceed with the purchase of the Property following review of the Buyer's contingencies pursuant to Paragraph 11, the Seller shall have no further responsibility for the remediation of any environmental contamination on the Property, except for the correction of any condition that violates the Seller's warranties under Paragraph 6 regarding the environmental condition of the Property. The Seller will cooperate with the Buyer in seeking federal, State, County and other funds to apply to the cost of remediation including, but not limited to, timely cooperation in securing a grant through the State of Wisconsin's Blight Elimination and Brownfield Redevelopment Program.
10. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Buyer's Contingency Period as described in Paragraph 11, the Seller will reproduce at the Seller's expense and send to the Buyer at the Buyer's office copies of all environmental studies, reports, permits, applications and remediation plans or assessments of the Property and correspondence between the Seller and any regulatory authority, and all studies, reports, plans or assessments related to the condition of the improvements on the Property including, but not limited to, asbestos, lead-based paint inspections and other hazardous waste inspections related to the physical condition of the improvements on the Property in the Seller's possession or control.
11. Buyer Contingencies. The Buyer shall have one hundred eighty (180) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of the Buyer's contingencies are unacceptable, in the Buyer's sole discretion. If the Buyer timely terminates the Agreement as a result of any of the Buyer's contingencies, the Earnest Money shall be promptly refunded to the Buyer and the Agreement shall be null and void.
  - a. Land Use Approvals. The Buyer securing all land use approvals for the development of the Project. Such approvals may include, but not be limited to: approval of a conditional use or Planned Unit Development, approval of an elevated covered walkway over Livingston Street connecting the Project with the property located at 10 North Livingston, approval of internal drive throughs not visible from the public street, approval by the Urban Design Commission and all other zoning, building, engineering, traffic and similar approvals and permits necessary or required to complete the Project.
  - b. Project Financing. The Buyer securing financing acceptable to the Buyer for the construction of

the Project. Such financing may include, but not be limited to, Tax Incremental Financial Assistance ("TIF").

- c. Subdivision. The Buyer securing approval for subdivision of the Property acceptable to Buyer via certified survey map and/or condominium plat, to be recorded at or prior to Closing.
- d. Inspections and Testing. The Buyer obtaining various inspections and testing of the Property. The Buyer, at its sole expense, may obtain an inspection of the Property and all related improvements located on the Property, a Phase 1 or 2 environmental site assessment of the Property and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon.
- e. Survey and Title. The Buyer reviewing and agreeing to accept the condition of title to the Property as revealed by the title commitment and surveys to be delivered to the Buyer under Paragraphs 13 and 17.
- f. Environmental Review. The Buyer reviewing and approving the documents to be delivered to the Buyer under Paragraph 10.

The Buyer's Contingency Period may be extended for an additional sixty (60) days by written notice from the Buyer to the Seller prior to the expiration of the Buyer's Contingency Period.

12. Seller Contingencies. The Seller shall have one hundred eighty (180) days from the Effective Date (the "Seller's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of the Seller's contingencies cannot be completed despite the Seller's best efforts. If the Seller timely terminates the Agreement as a result of any of the Seller's contingencies, the Earnest Money shall be promptly refunded to the Buyer and the Agreement shall be null and void.

- a. Capital Budget Authorization. The Seller obtaining budget authorization from the Common Council of the City of Madison for any TIF financial assistance.

The Seller's Contingency Period may be extended for an additional sixty (60) days by written notice from the Seller to the Buyer prior to the expiration of the Seller's Contingency Period.

13. Survey. The Seller shall provide to the Buyer, at the Seller's expense, within sixty (60) days of the Effective Date, an ALTA/ACSM Land Title Survey of the Property that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2011 in order to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and title company providing the title insurance described in Paragraph 17. The survey shall show the location of all exceptions shown by the title commitment that are capable of being shown on a survey.

14. General Public Parking Restriction. Parking in the structured parking facility on the Property shall be restricted to the tenants, employees, customers and visitors of the Project during the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday (excluding holidays). Rental of stalls to the general public in said structured parking facility shall be prohibited on the days and during the hours provided herein.

15. Special Conditions of Sale. The Buyer shall:

- a. incorporate Passivhaus standards in the Project's residential owner-occupied units that will result in each unit requiring space heating energy of 1 BTU per square foot per heating degree day.
- b. incorporate a roof top production farm with greenhouse elements and a storm water collection system into the Project.
- c. guarantee that forty-five (45) rental units shall be targeted towards 50% and 60% of County Median Income for a minimum of fifteen (15) years.

- d. retain the services of a licensed commercial broker for the leasing of commercial space within the Project.
  - e. comply with all state and federal laws, specifically including labor-related laws as articulated in federal legislation and overseen by the National Labor Relations Board. The Buyer further agrees to encourage all commercial tenants in the Project to adopt labor-related goals and practices consistent with the Buyer's Vision Statement for the Project attached as Exhibit D.
16. Access to Property. The Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing anticipated by the Buyer's contingency contemplated in Paragraph 10.d. including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of any building and related improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair all damages caused by its inspections, at the Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection.
17. Indemnification. The Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall be liable to and shall agree to indemnify, defend and hold harmless the Seller, and its officers, officials, agents, and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Seller or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to the Property, including loss of use thereof, to the extent arising from, in connection with, caused by or resulting from the acts or omissions of the Buyer and/or its authorized agents, engineers, consultants and contractors, and all of their and Buyer's officers, agents, employees, assigns, guests, invitees, licensees, contractors or subcontractors, in the performance of any inspections or testing of the Property. Negligence on the part of the Seller and its officials, officers, agents or employees shall not eliminate the indemnification obligations stated in the preceding sentence.
18. Insurance. The Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the Seller's Risk Manager: bodily injury, death and property damage of \$1,000,000 per occurrence. The policy or policies shall name the Seller as an additional insured. As evidence of this coverage, the Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall furnish to the Seller a certificate of insurance on a form provided by the Seller prior to entering on the Property to perform any inspections or testing as provided herein.
19. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days of the Effective Date a commitment from First American Title Insurance Company, National Title Services Office, 10 West Mifflin, Madison, Wisconsin 53703, Attention: Chris Zak (the "Title Company") to issue a 2006 ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property, as of a date no more than fifteen (15) days before such title proof is provided to the Buyer, to be in the condition called for in the Agreement, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions accepted in writing by the Buyer ("Permitted Exceptions"). The Buyer shall notify the Seller of any valid objection to title, in writing, prior to Closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to remove the objections, the Buyer shall then have the option, exercisable within thirty (30) days of the Buyer's delivery of its original notice of objection to title, to either (a) terminate the Agreement by delivery of written notice to the Seller, in which case the Agreement shall be null and void and the

Buyer shall be entitled to a return of the Earnest Money, or (b) waive such objections to title. The Buyer's failure to timely deliver written notice of termination under Section (a) of the preceding sentence shall be deemed to be waiver of the Buyer's objections to title. Between the effective date of the commitment and Closing, the Seller shall not place any additional encumbrances against the Property (except for such encumbrances that the Seller shall remove at Closing).

20. Closing.

- a. The consummation of the purchase and sale of the Property, and recordation of the Deed conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting Municipal and zoning ordinances and the Permitted exceptions, shall occur on the earliest practicable date following the later of (i) the Seller's receipt of the Notification Notices, and (ii) April 30, 2015 ("Closing").
- b. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by the Agreement.
- c. All real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest known mil rate.
- d. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the date of Closing.
- e. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with conveyance of the Property.
- f. The Buyer shall pay one-half, and the Seller shall pay the other half of any closing escrow fees charged by the Title Company to facilitate closing. All other closing costs shall be prorated between the Buyer and the Seller as is customary for commercial real estate transactions in the City of Madison, Wisconsin.
- g. In the event the Buyer decides to include all or any part of the property being purchased by it in a 1031 exchange transaction, the Seller agrees to cooperate in such transaction provided however, that such cooperation shall be at no out-of-pocket cost to the Seller and provided the Seller shall not act as an intermediary in the 1031 exchange transaction.

21. Cooperation. The Agreement shall also provide that:

- a. The Seller and the Buyer each will at any time, or from time to time upon written request, sign and deliver such other documents as may be reasonably requested, necessary or appropriate to give full effect to the terms of the Agreement, which documents may be approved by the City of Madison Common Council.
- b. The Seller will cooperate with the Buyer in seeking federal, State, County and other funds to support the "Project" including, but not limited to, timely cooperation in securing a grants from Wisconsin Economic Development Corporation's Business and Community Assistance programs, and

22. Option Agreement. Upon execution of the Ground Lease, the Seller and the Buyer shall execute an Option Agreement that will provide that if the Buyer has not commenced construction of the Project within one hundred eighty (180) days from the execution date of the Ground Lease (the "Deadline") that the Seller shall have the option to buy the Property from the Buyer at the Purchase Price subject, however, to delays caused by Force Majeure events, in which events the Buyer shall be granted a day-for-day extension of the Deadline for the duration of the delay caused by the Force Majeure event. "Force Majeure" shall be defined as any events, actions or omissions which are outside of the reasonable control of the Buyer including, but not limited to: severe weather or natural disasters; Acts

of God or war; lawsuits or other actions commenced by third parties to delay, stop or materially modify the Project; strikes, lockouts, picketing (legal or illegal) or riots; fire or other casualty; accidents; unavailability of fuel, power, supplies or materials; the passage or application or limitation of any law, regulation, ordinance or order by any government authority which has the effect of preventing commencement of construction; delays in deliveries; or delays caused by the action or omission of the Seller. "Commenced construction" or "commencement of construction" shall be defined as commencement of excavation for the foundation of the Phase 1 Project. The Seller shall have sixty (60) days after expiration of the Deadline, as may be extended due to Force Majeure events as provided herein, to exercise the option as provided in the Option Agreement.

BE IT FINALLY RESOLVED that Mayor and City Clerk are authorized to execute, deliver, accept and record any and all documents and take such other actions as shall be necessary or desirable to accomplish the purpose of this resolution in a form approved by the City Attorney.

## EXHIBIT A

### THE PROPERTY LEGAL DESCRIPTIONS

802 East Washington Avenue  
251-0709-132-1203-4

[ORIGINAL PLAT, BLK 143, ALL OF LOTS 1 THRU 18, EXC SE 99 FT OF LOT 10, SE 99 FT OF NE 33 FT OF LOT 11 & EXC SW 33 FT OF LOT 11]

854 East Washington Avenue  
251-0709-132-1215-9

[ORIGINAL PLAT, BLK 143, SE 99 FT OF LOT 10, SE 99 FT OF NE 33 FT OF LOT 11 & SW 33 FT OF LOT 11. EXC THAT PART DESC AS FOL:BEG E COR OF SD LOT 10, TH S 46 DEG 08 MIN 01 SEC W 81.68 FT, TH N 44 DEG 43 MIN 20 SEC E 72.11 FT TO PT OF CUR, RAD 9 FT, CHRD BRS N 01 DEG 28 MIN 31 SEC E 12.35 FT, TH N 41 DEG 46 MIN 19 SEC W 21.51 FT TO WLY ROW LN N PATTERSON STREET, TH S 43 DEG 54 MIN 59 SEC E 31.94 FT ALG WLY ROW LN TO POB.]